

STATE OF CALIFORNIA
WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 20595

Application 29837 of Nugget Hydroelectric, L.P. (over)

620 South Syracuse Way, Suite 125, Englewood, CO 80111

filed on October 11, 1990, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source:

Tributary to:

<u>(1) Owl Gulch</u>	<u>Deadwood Creek thence</u>
<u></u>	<u>North Yuba River</u>
<u>(2) Deadwood Creek</u>	<u>North Yuba River</u>
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2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
BY CALIFORNIA COORDINATE SYSTEM, ZONE 2 (1) NORTH 685,500 FEET AND EAST 2,255,500 FEET	SW $\frac{1}{4}$ OF SW $\frac{1}{4}$	33	20N	8E	MD
(2) NORTH 685,800 FEET AND EAST 2,255,800 FEET	SW $\frac{1}{4}$ OF SW $\frac{1}{4}$	33	20N	8E	MD

County of Yuba

3. Purpose of use:	4. Place of use:	Section	Township	Range	Base and Meridian	Acre
HYDROELECTRIC POWER GENERATION	SW $\frac{1}{4}$ OF NW $\frac{1}{4}$	9	19N	8E	MD	

The place of use is shown on map on file with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 30 cubic feet per second to be diverted from January 1 to December 31 of each year. (0000005)
6. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)
7. Construction work shall be completed by December 31, 1995. (0000008)
8. Complete application of the water to the authorized use shall be made by December 31, 1996. (0000009)
9. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until a license is issued. (0000010)
10. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit. (0000011)
11. Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.
- The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.
- The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust. (0000012)
12. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges. (0000013)

13. This permit shall not be construed as conferring upon permittee right of access to the point of diversion. (0000022)

14. The equivalent of the authorized continuous flow allowance for any 14-day period may be diverted in a shorter time, provided there is no interference with other rights and instream beneficial uses, and provided further that all terms and conditions protecting instream beneficial uses are observed. (0000027)

15. For the protection of fish and wildlife, permittee shall maintain a minimum flow of 4 cubic feet per second as follows: 2.5 cubic feet per second immediately below the point of diversion in Deadwood Creek and 1.5 cubic feet per second immediately below the point of diversion in Owl Gulch or the natural flow, whichever is less.

The permittee may temporarily modify minimum flows if required by operating emergencies beyond the control of permittee. The permittee may also modify flows for short periods upon written consent of the Forest Service. Written notification shall be provided to the State Water Resources Control Board within 15 days of any such reduction in flow.

16. Permittee shall install devices, satisfactory to the State Water Resources Control Board, which are capable of measuring the bypass flows required by the conditions of this permit. Said measuring devices shall be properly maintained. (0060062)

17. In accordance with Section 1601, 1603, and/or Section 6100 of the Fish and Game Code, no work shall be started on the diversion works and no water shall be diverted under this permit until permittee has entered into a stream or lake alteration agreement with the California Department of Fish and Game and/or the Department has determined that measures to protect fishlife as specified in Federal Energy Regulatory Commission License 6780 have been incorporated into the plans for construction of such diversion works. Construction, operation, and maintenance costs of any required facility are the responsibility of the permittee. (0000063)

18. Permittee shall, prior to construction, file a Report of Waste Discharge pursuant to Water Code Section 13260 with the California Regional Water Quality Control Board, Central Valley Region (Regional Board), and shall comply with all Waste Discharge Requirements issued by the Regional Board. If the Regional Board waives issuance of Waste Discharge Requirements, permittee shall comply with Parts I and II of the "Guidelines for Protection of Water Quality During Construction and Operation of Small Hydro Projects" (Guidelines) as contained in the Water Quality Control Plans of the Central Valley Basin.

Specific requirements set forth in this permit shall prevail over any specific or general requirements in the referenced Guidelines in the event of conflict.

When complying with the Guidelines, pursuant to this condition, permittee shall not commence construction until the Erosion Control Plan and any baseline data required by the Guidelines have been submitted to and approved in writing by the Regional Board; and before commencing sluicing operations, permittee shall submit and receive written approval from the Regional Board of the Sluicing Operation Plan. (0000102)

19. Water diverted under this permit is for nonconsumptive use and is to be released to Deadwood Creek within the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 9, T19N, R8E, MDB&M. (0000111)

20. No construction shall be commenced and no water shall be used under this permit until all necessary federal, state and local approvals have been obtained, including compliance with any applicable Federal Energy Regulatory Commission requirements. (000J001)

21. This permit is issued in compliance with the order and judgement of the United States District Court, Eastern District of California, in Nugget Hydroelectric, L.P. v. State Water Resources Control Board (U.S.D.C., E.D. Cal., CIV. No. S-90-203 EJG). The State Water Resources Control Board has appealed from that order. The State Water Resources Control Board reserves jurisdiction, in the public interest, to revoke or amend this permit following final appellate court review or any relevant change in applicable federal law. In issuing this permit, the State Water Resources Control Board expressly declines to waive any rights, claims, defenses, or demands of any kind that it may hold against Nugget Hydroelectric, L.P., or its principals, agents, or representatives, resulting from or related to the pending appeal from the order and judgement in the above federal court action.

(000M001)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: FEBRUARY 20 1992

STATE WATER RESOURCES CONTROL BOARD


for Chief, Division of Water Rights